

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.350 OF 2016**

SHRI. XEC MOMOD ALI @ SHAIKH
MAHAMAD ALI AND 3 ORS.

... PETITIONERS

V/S

SHRI. ABDUL KADAR SHAH AND 22 ORS.

...RESPONDENTS

Shri I. Agha, Advocate for the Petitioners.

Shri A.D. Bhobe, Advocate for Respondents No.1
to 4.

Shri Ravi Gawas, Advocate for Respondent No.13.

CORAM : C.V. BHADANG, J.

Reserved on : 15th JUNE, 2016

Pronounced on : 5th JULY, 2016

ORDER :

By this petition, the petitioners (original defendants no.2,4,8 & 9) are challenging the order dated 22/02/2016 passed by the learned Senior Civil Judge, Bicholim in Special Civil Suit No.3/2013/A by which an application (D-5) filed by the respondents no.1 to 4 (plaintiffs) under Order 1 Rule 8 of the Code of Civil Procedure (CPC), for permission to file the suit in a representative capacity has been allowed. The respondents no.5 to 23 are the rest of the defendants before the Trial Court.

2. The brief facts are that the respondent nos.1 to 4 have filed the aforesaid Civil Suit for declaration, as also, for cancellation of a Deed of Partition and Rectification and Sale Deeds, as null and void as being "created at the back of the plaintiffs". The respondents/ plaintiffs, are also seeking permanent and mandatory injunction, damages and other consequential reliefs. The plaint annexes the various documents including the Deed of Partition, Deed of Rectification and the Sale Deeds.

3. The petitioners filed an application (Exhibit D-5) purportedly under Order 1 Rule 8 of the CPC claiming that there are numerous persons as co-owners, having same interest, in the suit and all persons/co-owners, who are interested to seek relief, cannot be made parties, as it is difficult to implead them as parties. However, the interest of the co-owners

have to be safeguarded. It is also contended that the persons whose names are recorded in the record of rights are numerous and they are residing at various places, all over Goa and their addresses are not known for being impleaded as defendants. The respondents/plaintiffs therefore sought permission to file the suit in a representative capacity.

4. The application was opposed on behalf of the petitioners. It was contended that the plaint does not contain foundational particulars for seeking such a relief. It is submitted that the interest of all the co-owners is not common and the suit is collusive and is filed in connivance with some of the defendants. It was contended that the entire estate has been partitioned and third party rights are already created. It was contended that the application is vague. It was denied that there is sameness or community of interest between the co-owners. It was contended that the suit involves private cause

and not any rights in rem and, therefore, the application is not maintainable.

5. The learned Trial Court, has found, that in the application, the respondents/plaintiffs have indicated the co-owners of the suit property namely whose names are appearing in the record of rights as also the parties to the Partition Deed, the Rectification Deed and the Sale Deeds which are sought to be annulled, has having persons having common interest in the suit property. The learned Trial Court has further found that the partition deed and other deeds are on record. The learned Trial Court has observed that "it is trite law that documents filed along with the plaint form part of the pleadings". Therefore, in the opinion of the Trial Court the names of the interested persons having community of interest are there on record of the file. It was thus found that it cannot be said that the plaintiffs have not disclosed the names of the persons having same interest.

Therefore, in the opinion of the Trial Court the application could not be dismissed as being vague or uncertain as claimed on behalf of the petitioners. The learned Trial Court ultimately found that there is sameness or community of interest of all the co-owners of the suit property which are referred to in paragraph 18 & 27 of the plaint which according to the learned Trial Court was sufficient to allow the application.

6. I have heard Shri Agha, the learned counsel for the petitioners, Shri Bhoje, and the learned Counsel for the respondents no.2 and 3, who are the contesting respondents.

7. It is submitted by Shri Agha, the learned Counsel for the petitioners that there is no community of interest as such between the co-owners. The plaint lacks foundational pleadings necessary for seeking permission to sue in a representative capacity. On behalf of the

petitioners, reliance is placed on the decision of this Court in **Shri Mahadev @ Madhav Shablo Solienkar @ Gaude (since dec.) through legal heirs & Ors. V/s. Shri Pandu Saju Solienkar & Ors.** in **Writ Petition No.3/2015** dated 19/01/2016. He submits that the learned Trial Court, was in error, in finding, that there is community of interest, between the co-owners and, therefore, the impugned order deserves to be set aside.

8. On the contrary, Shri Bhobe, the learned Counsel for the respondents no.2 & 3 has submitted that the Trial Court has rightly found that the documents filed along with the plaint coupled with para 18 & 27 sufficiently make out a case for showing that there is community of interest between the co-owners requiring grant of permission, as such.

9. I have considered the rival circumstances and the submissions made. Order 1 Rule 8 of

Civil Procedure Code, envisages, there being numerous persons, having the same interest, when the Court can grant permission to sue in a representative capacity. The Hon'ble Apex Court in the case of **Chairman, Tamil Nadu Housing Board, Madras V/s. T.N. Ganapathy** reported in **AIR 1990 SC 642** has inter alia held that the provisions of Order 1 Rule 8 of Civil Procedure Code have been enacted in public interest, so as to avoid multiplicity of litigation. The sine qua non is that the several persons on whose behalf the suit is sought to be filed must be shown to have common or community of interest. The requirement is not that the suit should involve reliefs which are in public interest. It has further been held that there are no limiting words used in the said rule so as to limit its scope to a particular category of suit and the provision must receive an interpretation which will sub serve the object of the enactment namely avoiding multiplicity of the litigation.

10. Coming back to the present case, the respondents no.1 to 4/plaintiffs have set out the transaction/proceedings which are challenged in para 18 of the plaint. The relevant documents are placed on record. The learned Trial Court after finding that the plaint and the documents together make out a case for grant of leave. The exercise of jurisdiction, in this regard does not suffer from any jurisdictional error, so as to require interference. In the case of **Chairman, Tamil Nadu Housing Board, Madras V/s. T.N. Ganapathy** (supra) the learned Trial Court had rejected the application seeking leave to sue in a representative capacity. On the facts of that case it was found that there were grounds on which the rejection was justified. In that case, it was found that the sameness of interest has not been sufficiently demonstrated from the averments in the plaint and the grounds stated in the application. The question whether in a given case the requirement of existence of sameness or community of

interest is demonstrated or not would be a question which would depend on the facts and circumstances of each case. The decision in the case of ***Shri Mahadev @ Madhav Shablo Solienkar @ Gaude (since dec.) through legal heirs & Ors.*** (supra) clearly turned on its own facts and it is difficult to find as to how it would help the case of the petitioners.

11. I have carefully gone through the impugned order and I do not find that any case for interference is made out. In the result, the Writ Petition is dismissed with no order as to costs.

C.V. BHADANG, J.

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